

Variations and Consents

Variations and consent application forms may require that drawings be submitted. Applicants, their lawyers, agents, and municipal staff often feel that the cost of an Ontario Land Surveyor's opinion is high. Some may think that the request is so simple that the expertise of an Ontario Land Surveyor is not required. Applicants and their agents may decide that they can use an old survey and overlay approximate measurements to locate new structures or buildings. This reasoning is not correct and may be in violation of Ontario and Canadian law.

The Ontario Land Surveyor has the training and field experience embodied in law to protect the interest of the general public from the inappropriate use or misuse of cadastral data and information. Contact an Ontario Land Surveyor at the earliest opportunity to review an application for a variance or consent. It is in the best interest of the public.

Find an Ontario Land Surveyor



The Surveyors Act

Section 11 of the Surveyors Act provides that only a licensed Ontario Land Surveyor may undertake boundary surveys in the province of Ontario.

1. No person shall engage in the practice of cadastral surveying or hold himself, herself or itself out as engaging in the practice of cadastral surveying unless licensed under this Act.
2. No person shall provide to a member of the public a service that is part of the practice of cadastral surveying except under and in accordance with a Certificate of Authorization.

Nothing can replace a survey!

"Both lawyers and surveyors believe that there is nothing that can replace a survey or provide as much information to the property owner about the extent of the owner's title. An up-to-date survey could save thousands of dollars worth of trouble down the road."

Bob Aaron, Real Estate Lawyer
and Toronto Star Columnist



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The Law Says Only an
ONTARIO LAND SURVEYOR
Can Verify and Mark a Boundary

**GOOD BOUNDARIES
MAKE GOOD NEIGHBOURS**

NOTHING CAN REPLACE A SURVEY
Find an Ontario Land Surveyor

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WHAT IS A SURVEY?

A survey is an Ontario Land Surveyor's opinion of the location of the boundaries of a parcel of land. A plan and/or report that bears a surveyor's signature certifies the extent of title of a parcel and any factors that may affect the quality of the extent.

A survey has four components:

1. research
2. measurement
3. monumentation
4. a plan or report

WHAT IS AN UP-TO-DATE SURVEY?

"Survey" in a purchase agreement means an up-to-date plan of survey prepared by an Ontario Land Surveyor. It is up-to-date if:

1. The plan complies with the current Statutes and Regulations of Ontario.
2. No physical changes have taken place to the property or the monumentation since the plan was signed.
3. A search for documentary evidence indicates that no changes have occurred.

An "old survey" is a document that has not been prepared for the current transaction.

An up-to-date survey must have the embossed seal of an Ontario Land Surveyor on the print.

COPYRIGHT AND FAIR USE

- Copyright remains with the Ontario Land Surveyor who created the plan.
- Under the Copyright Act, "fair use" allows a person to use a plan for research only. It is not "fair use" to use a plan for benefit in a transaction other than the transaction for which the plan was prepared.
- A client does not have the right to unlimited use of the plan in subsequent dealings.
- The client does not have the right to re-use the plan for any purpose other than what was originally intended. No one other than the Ontario Land Surveyor, who prepared the plan, has the right to alter the plan.
- No third party has the right to use a plan for a use not intended in the original application.

WHAT IS THE REAL ESTATE PROFESSIONAL'S LIABILITY WITH OLD SURVEYS?

The Real Estate Professional is assuming all liability by using "old" documents that were never intended to be used in a current transaction. It is similar to using an out-of-date appraisal when the value of the parcel has changed over time.

Both the appraisal and the plan must be current to reflect the accurate value and to show any improvements, such as fences, that were made to the property after the original survey. Any reliance on an old survey can potentially be costly to the user.



Know your boundaries.

TITLE INSURANCE IS NOT AN ALTERNATIVE TO AN ONTARIO LAND SURVEYOR'S OPINION

Obtaining an up-to-date survey in a real estate transaction allows a purchaser to become aware of risks and encumbrances on title.

A title insurance policy identifies the insured property by the legal description that is set out in the insurance application. If the legal description is incomplete or incorrect, matters affecting the land, which are not set out in the title insurance policy, may not be covered.

An up-to-date plan of survey would confirm that the legal description included with the title insurance policy contains all of the land that is expected to be purchased.

Title insurance may unintentionally mask potential title and boundary problems. An up-to-date survey identifies and addresses problems before a property is purchased.

The purchaser is advised to engage a lawyer to verify the quality of title and an Ontario Land Surveyor to certify the extent of title before completing a real estate transaction.

WHAT IS THE VALUE OF A PROFESSIONAL SURVEYOR'S OPINION?

Ontario Land Surveyors provide professional opinions that may be relevant to the marketability of title or compliance with local building and zoning by-laws.

Ontario Land Surveyors work with clients to add value to real estate assets. The cost of the survey is a small percentage of the total sale or purchase, and a reasonable price to pay for protection from litigation resulting from any potential errors in the property description contained in the Offer of Purchase.

RETAINING THE SERVICES OF AN ONTARIO LAND SURVEYOR (OLS)

An OLS has the required knowledge, equipment and competency to provide an accurate representation of boundaries and encumbrances. The services of an OLS should be sought well in advance of the closing date to allow sufficient time to complete the survey and resolve any issues or concerns that the survey may reveal. The price of the survey should never be the sole consideration when retaining the services of an OLS.



Protect your real estate assets.

Property Monuments

Property monuments provide physical evidence of boundaries shared by adjacent land owners. Ontario regulations require that they be set by Ontario Land Surveyors at property corners and at regular intervals on boundaries. They may be square steel bars, or plastic bars, of up to 1.2 m long; or they may be pins set in rock, or crosses cut in concrete.